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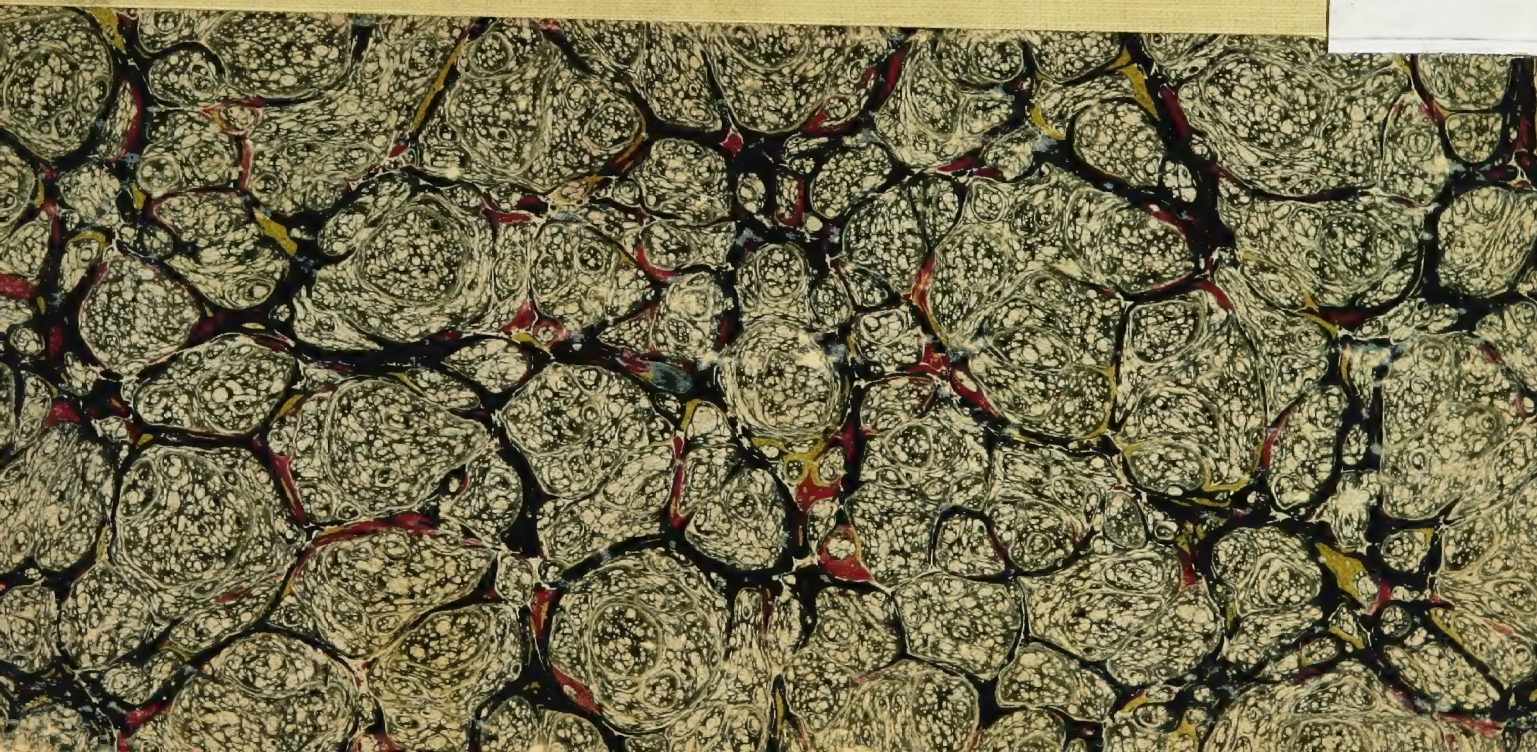

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THE TEACHING OF SIR HENRY MAINE

AN INAUGURAL LECTURE

DELIVERED IN CORPUS CHRISTI COLLEGE HALL
ON MARCH 1, 1904

BY

DR. PAUL VINOGRADOFF, M.A., Hon. D.C.L.

CORPUS PROFESSOR OF JURISPRUDENCE
IN THE UNIVERSITY OF OXFORD

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Mr. President, Ladies and Gentlemen.

It is with a natural feeling of diffidence that I address this representative gathering from the very place where Maine and Pollock used to lecture. I am very sensible of my many shortcomings, and if I take courage to perform my task, it is because I hope that the University which has so generously elected me may support my efforts in the same liberal spirit. If I may be allowed to begin with a personal remark, I should like to say that I was first attracted towards the study of English law by those features of English life which have always strongly appealed to the interest of foreign observers, notably the rule of law and the manly spirit of freedom. Like so many others I began by studying political institutions, but was insensibly led to inquiries as to legal and social history. This brought me into contact with some of the best representatives of English thought and learning, and more especially with the Oxford intellectual centre. I have had the privilege of personal intercourse with both the professors who have rendered famous the Corpus chair of Jurisprudence. Of my immediate predecessor it would be difficult for me to speak in an appropriate manner, though the difficulty does not lie in the lack of merit and achievements on the part of a scholar who stands almost unique as a representative of combined legal, philosophical, and historical learning. But it is surely allowable and even desirable that I should render you some account as to how I understand the teaching of Maine, the first occupant of the chair, who in a great measure determined its position in the circle of studies. This theme for my inaugural lecture seems also convenient, because it will afford the opportunity of taking a stand in regard to

general problems while discussing a definite and concrete case.

It is not without significance that, though coming from abroad, I can claim Maine as one of my most influential teachers. His was one of those minds which radiate far beyond their immediate surroundings; the whole of my generation of students of law and history have had to deal directly or indirectly with the ideas propagated by him or similar to his, and the secret of such a potent radiation is well worth attending to. It is not unusual nowadays to talk in a rather supercilious manner of the lack of erudition and accuracy, of the allusiveness and vagueness of Maine's writings. Those who indulge in such cheap criticism should rather try to realize what accounts for his having been a force in European thought, a potentate in a realm where parochial patronage and a mere aptitude for vulgarization are not recognized as titles to eminence.

It is not so much to the personality of Maine that my remarks will apply: some of those who are listening to me would certainly be more able to recall to our mind the personal characteristics of this remarkable man—a scholar, who before all strove to be a thinker; a lawyer, who was more interested in the origins of legal rules than in the rules themselves; a man of the world, who brought all the resources of his shrewd common sense to the investigation of antiquarian problems; a sociologist, who never dealt in names nor played with words. As I say, I would not dare to attempt a sketch of this eminent personality on the strength of my very incomplete impressions. But there is another aspect from which one may view the life of a leader of thought: such a leader always personifies in his life and work, with more or less individual colouring, some combination of the aims and ideas of his time, and surely, in our case, it is well worth while to analyse the elements of thought which constitute Maine's teaching. Without going further than his books and a few papers which have been published in regard to them, without

pretending to discover something entirely new and startling, we may try to make out the mutual interdependence and the relative importance of his ideas.

I should like, however, to start from a personal observation. Maine was certainly not one of those builders of systems as they are to be found among German scholars, who sometimes, in exaggeration of their unrivalled learning, seem to move away from reality and to dwell in a phantastic region of their own, where they accumulate and dispose their materials according to requirements of speculation, without much regard for the facts of life. Nor was he subject to the spirit of formalism which represents the natural exaggeration of the lucidity and order, so characteristic of the French school: he never sacrificed the complexity of organic evolution to unity of conception and clearness of exposition. Whatever his failings, he undoubtedly possessed the merits of an Englishman in his search for the meaning of life as it really is. Not the least noteworthy of his sayings is the definition of law as *common sense*[1]. And we may be sure that it is not through chance, or oddity of disposition, or scholarly absence of mind that this clear-headed thinker of rather epicurean tastes spent his life in the hazardous enterprise of trying to connect the earliest notions of mankind as to law with the results of modern thought.

Maine has taken good care to explain why his life's work was achieved in this direction. I think that students of his books will admit that he conceived his whole literary career as a constant struggle against pure abstractions and *a priori* assumptions. I will just refer to the following retrospect, drawn by our author near the end of his life. After confessing a distaste for inquiries as to the absolute origin of human society, inquiries 'which only land the investigator in mud and fog,' he proceeds to define his own aims:

'The course which I have followed . . . has been to trace

[1] Address to the students of the University of Calcutta (Village Communities, 3rd ed., 258).

the real as opposed to the imaginary or the assumed history of the institutions of civilized mankind. When I began it, several years before 1861, the background was obscured and the route beyond a certain point obstructed by *a priori* theories based on the hypothesis of a law and a state of nature[1].'

Although Maine recognized a certain usefulness in these conceptions in so far as they cleared the way for legal reforms, assisted the establishment of international law, and incited to a simplification of law in general, he nevertheless contended that they were based on thoroughly false assumptions of fact and that they produced mischief both in jurisprudence and in the practice of the law. He positively refused to accept the idea of a social compact as the basis for the rights and duties of man in society, pleading that everything we know about the early stages of human societies shows these latter to be organic bodies and not products of contractual combination. As strong a protest was entered by him against speculations on the condition of primitive man:

'These sketches of the plight of human beings in the first ages of the world,' says he, 'are effected by first supposing mankind to be divested of a great part of the circumstances by which they are now surrounded, and by then assuming that in the condition thus imagined, they would preserve the same sentiments and prejudices by which they are now actuated, although, in fact, these sentiments may have been created and engendered by those very circumstances of which, by the hypothesis, they are to be stripped[2].'

Even the limited value which Maine was disposed to concede to the teaching of the law of nature he ascribed chiefly to the fact that under its generalities there was hidden a certain amount of matter-of-fact law which was not the product of mere abstractions. One of his favourite pursuits was to trace the tenets of modern international law through appeals to considerations of natural equity to the

[1] Early Law and Custom, 192.

[2] Ancient Law, 254.

historical *jus naturale* of the Romans and thence to the *jus gentium*, the actual law laid down by Roman judges for the transactions of the multifarious population which gathered around their tribunals. No less an influence on the formation of these *a priori* assumptions was assigned by Maine to the political struggles of the seventeenth and of the eighteenth centuries, which called forth a negation of traditional institutions and acquired rights. In his view Locke, Hobbes, and Rousseau cannot be understood and estimated at their true value, if we study their theories without taking into account the circumstances under which they were formed. In a work usually put aside by Maine's followers, but exceedingly characteristic of the considerations which influenced our thinker, in the book on Popular Government, we find an extensive criticism of Rousseau's speculations on primitive man. Quite apart from the polemical value of these criticisms, the very temper in which they were conceived and conducted is not without meaning: it shows what a passionate hold the opposition against these theories had acquired on Maine's mind. Our highly polished and fair-minded writer waxes almost savage in his diatribe against Rousseau, and not the least startling sign of his disposition is perhaps to be found in the unexpected sally against Thackeray, some of whose favourite personages are said 'to have something of Rousseau's natural man as he would have shown himself if he had mixed in real life, something, that is, of the violent blackguard [1].'

Maine's opposition was directed not only against theories of the state of nature and their various applications in law and politics, but also against a movement in jurisprudence of which he recognized the importance, namely, against analytical jurisprudence, as expounded by Bentham and Austin. In this case an attempt was made to establish general principles and to deduce their consequences not as a system of natural equity or of the necessary attributes of human nature, but by the analysis of the principal ideas

[1] Popular Government, 154.

of juridical intercourse at the present time. Maine often dwells on the value of these attempts, claims for them a distinctly scientific character, and calls attention to their close affinity with the development of political economy. Bentham and Austin appear to him as the juridical compeers of Adam Smith and Ricardo. But still, he is unable to follow the lead of these thinkers and clearly marks the dividing line between their conceptions and his own. Their mode of investigation is too abstract for him. Its value depends at least on the estimate of the elements rejected in the process of abstraction, and the importance of these elements clearly increases as we proceed from mathematics to the analysis of economic facts and from those to the study of juridical relations. These last, at any rate, are so permeated with religious, ethical, political ideas, so bound up with custom, tradition, imitation, that it is impossible to arrange them on the single string of utilitarian reasoning, even though it be tending towards the happiness of the many[1]. Even the best expositors of political economy 'occasionally lay themselves open to the observation that they generalize to the whole world from a part of it; that they are apt to speak of their propositions as true *a priori*, or from all times, and that they greatly underrate the value, power, and interest of that great body of custom and inherited ideas which, according to the metaphor which they have borrowed from the mechanicians, they throw aside as friction[2].' And there is not a little in the writings of 'John Austin which seems to imply that the authors and expositors of civilized systems of law are constrained, by a sort of external compulsion, to think in a particular way on legal principles and on the modes of arriving at juridical results[3].'

The consequence is that this analysis of society as it exists 'and moves before our eyes, through omitting to call in the assistance of history, often degenerates into an idle

[1] Early History of Institutions, 361.
[2] Rede Lecture (Village Communities, 3rd ed., 233).
[3] Village Communities, 4.

exertion of curiosity, and is especially apt to incapacitate the inquirer from comprehending states of society which differ considerably from that to which he is accustomed[1].'

Need I recall to your mind the remarkable analysis of the relation between sovereignty and law by which the onesided character of Austin's conception of law is laid bare? A law according to Austin is, in substance, a general command laid down and sanctioned by sovereign force. The criticism in the Early History of Institutions is especially interesting because it illustrates both sets of objections formulated by Maine against the doctrines of analytical jurisprudence. The barrenness of its abstractions is manifested in the rejection of the notions of order and of public opinion as elements in the formation of law. On the other hand, the inconvenience of a reasoning not framed by definite conditions of space and time is proved by references to societies which do not recognize general commands, or do not ascribe their origin to an action of the sovereign, or do not look upon force as the necessary sanction of law, or allow divided allegiance to several ruling powers, as tribe and commonwealth, Church and State, local bodies and central government. And thus, though fully conscious of the vast difference between the teachers of the law of nature and the teachers of analytical jurisprudence, Maine still traces a direct filiation from one school to the other through Hobbes and Bentham, and deliberately leaves the way of deductive logic for the path of inductive reasoning on the basis of historical facts.

Hitherto our review of Maine's conceptions has been moving as it were on negative lines: we have been trying to ascertain against whom the polemical edge of Maine's mind was directed. Let us now turn to the other side of the problem and inquire what positive influences have to be taken into account in order to explain his position.

He himself undoubtedly thought that his way of reflecting on the facts of law and society went back to deeply rooted, national peculiarities. It would, of course, be too

[1] Ancient Law, 310.

much to say that the high appreciation of organic arrangements in social life, the distrust of abstractions, the ready acceptance of compromises and practical combinations are traits exclusively confined to the English intellectual atmosphere, or that English thinkers never swerved from these principles: we have been just mentioning a powerful school of deductive theorists. But the observation that the historical leanings described have their firmest hold on the English world, has been made too often to require special proofs. Maine claimed an affinity with some of the best-known defenders of organic development and conservative principles in English law and politics—Burke and Sir James F. Stephen[1]. Though certainly not a hater of French society and literature, he mostly disagrees with the French mode of handling questions of law and of politics. He recognizes the use of the so-called law of nature to French lawyers of the *ancien régime*, but he looks upon it as a kind of heroic medicine to be applied in desperate cases. Like all strong remedies, this drug is a poison after all and bound to disagree in many respects with the patient, even if it helped against a particular disease. And in so much as French politics and law followed the path of revolution, Maine has hardly anything but criticism to bestow on them. His opposition in this case assumed the strength of prepossession, and he really seems to forget the warnings which he was so apt to give on other occasions: he does indulge in hasty generalizations about democracy, party, the right of majorities and the like, without paying much heed to the highly complex nature of the problems discussed. For our purpose these utterances are interesting quite apart from their intrinsic value, because they reveal the bent of the mind we have to observe.

Another powerful influence acting on Maine in the same direction was his scholarly connexion with one particular school of continental jurists. He first approached the study of law mainly under the guidance of the German school

[1] Popular Government, 179; cf. 29, 54.

of historical jurisprudence which had formed itself around Savigny and Eichhorn. The special disquisitions of ancient law on testament, contract, possession, &c., leave no doubt as to his close dependence on Savigny and Puchta's writings. But the school of which we are speaking was anything but a group of technical specialists: it represented, on the contrary, a powerful social doctrine which had sprung into being in Europe's struggle against revolutionary rationalism, as embodied in the French Republic and in Napoleon's Empire. Romantic in its appeals to archaic custom and national traditions, conservative in its legal creed, the first school of historical jurisprudence entered the lists in support of a conception of law determined by historical antecedents, by a growth of national psychology hardly less instinctive than the evolution of language itself. The English disciple of Savigny often dwells on the ideas, that the greater part of the social and intellectual structure of a nation is bequeathed to it by former generations, that unconscious tradition is perhaps the most potent agent in historical life, that the margin of change is surprisingly small and progressive nations quite exceptional. Let us note, however, that Maine's eyes were open to certain conditions of progress. He does not indorse the doctrine that national characteristics are not to be overcome, in the same sense as individuals cannot get rid of their features and limbs. He traces a constant tendency to change, produced by intercourse. He even dwells, possibly not without a side-glance at Buckle's well-known theory of moral immobility, on the possibility and reality of moral progress[1]. But still progress is for him an exceptional process, in which only very few societies have achieved any marked success. He is inclined to strengthen this doctrine of a progressive minority by assigning a leading influence in the shaping of its course to Greek philosophy and to Roman law. There is, of course, a wide chasm between this conception of the unity of civilized mankind and the providential speculations of Hegel, but nevertheless the narrow restriction of the range

[1] Ancient Law, 71.

of progressive universal history is characteristic of an age which began by fixing its attention on national peculiarities and proceeded to consider the history of mankind from the point of view of intercourse between a few leading nations[1]. The peculiar trend of these ideas is very noticeable in a passage directed against Montesquieu's view of human societies, as exceedingly plastic bodies exposed to the decisive influence of external factors:

'Herein lies the error of his system. He greatly underrates the stability of human nature. He pays little or no regard to the inherited qualities of the race, those qualities which each generation receives from its predecessors and transmits but slightly altered to the generation which follows it. The truth is, that the stable part of our mental, moral and physical constitution is the largest part of it, and the resistance it opposes to change is such that, though the variations of human society in a portion of the world are plain enough, they are neither so rapid nor so extensive that their amount, character, and general direction cannot be ascertained[2].

I lay special stress on this point, because it marks as it were the boundary between the conceptions of the Savigny school and the peculiar contribution of Maine in the development of jurisprudence. The words just quoted are certainly conceived in the spirit of the older German school, and it is clear that the idea of national continuity, if carried far, would preclude the application of strictly scientific methods to history and historical jurisprudence. If every social individuality is very much alone by itself, there would be hardly room for comparison, general inferences and anything in the nature of historical laws. But the close of the sentence pointing to inquiries as to the 'amount, the character and the general direction' of the changes which affect human societies is outside the pale of the conservative school appealing to history for its justification. Maine brings into the field of inquiry a new element, the element of *science* in the English sense of the word, that is of exact knowledge based on observation, and aiming

[1] Ancient Law, 22. [2] Ibid., 116.

at the formulation of laws. The fact is that Maine did not only stand under the influence of the preceding generation, which had given such an extraordinary impulse to historical research, but also under the sign of his own time with its craving for a scientific treatment of the problems of social life. Nothing could be more impressive than his own words in the second address to the students of the University of Calcutta, and I must beg leave to quote them at some length:

'Among all our subjects of study there is no doubt as to which is the one to which belongs the future. The fact is that within the last fifteen or twenty years there has arisen in the world of thought a new power and a new influence—not the direct, but the indirect influence of the physical sciences, of the science of experiment and observation. The landmarks between the fields of knowledge are being removed; the methods of cultivation are more than suspected to be the same for all.' . . . 'It is now affirmed, and was felt long before it was affirmed, that the truth of history, if it exists, cannot differ from any other form of truth. There can be no essential difference between the truth of the astronomer, of the physiologist, and of the historian. The great principle that underlies all our knowledge of the physical world, that Nature is ever consistent with herself, must also be true of human nature and human society which is made up of human nature. It is not, indeed, meant that there are no truths except of the external world, but that all truth, of whatever character, must conform to the same conditions, so that, if indeed history be true, it must teach that which every other science teaches—continuous sequence, inflexible order, and eternal law[1].'

Again and again he draws illustrations in his special domain of jurisprudence from natural science. The inquiries of jurists based on *a priori* assumptions remind him of the condition of physics and physiology in the prescientific period. Rudimentary legal ideas are likened to the primary crust of the earth which forms, as it were, the

[1] Calcutta Address (Village Communities, 3rd ed., 266); cf. Sir J. Strachey's Address in Sir M. E. Grant Duff's Memoir of Sir H. Maine; Edinburgh Review, 1893, 104; Sir F. Pollock, Oxford Lectures, 41, 42.

basis for the geologist's investigations[1]. Of the celebrated exponents of natural science and inductive philosophy Darwin seems to have impressed him most, but Whewell, Mill, and Spencer had also been studied by him. One of his favourite views as to the passage in legal evolution from personal commands reputed to be inspired by Divine agencies, to a Law of Nature derived from metaphysical conceptions, and ultimately to scientific jurisprudence based on the exact observation of legal relations, recalls the well-known sequence of the three stages in positivist philosophy, although Maine does not seem to have directly borrowed the idea from Comte, Mill, or Lewes, but rather evolved it by a parallel process of reflection.

Enthusiasm for scientific aims and methods did not spend itself in this case in lofty aspirations and sounding words: it became the moving power of Maine's life-work. As we know, historical investigation of the growth of legal rules and ideas had, according to his view, to take the place of deductive reasoning. Readers of Ancient Law hardly need to be reminded of the words with which the chapter on the Early History of Testamentary Succession begins:

'If an attempt were made to demonstrate in England the superiority of the historical method of investigation to the modes of inquiry concerning jurisprudence which are in fashion among us, no department of law would better serve as an example than Testaments or Wills[2].'

The object of this historical investigation was not so much to solve questions of detail as to pave the way for a general view of legal evolution. The study of early stages and the methods of ancient history assumed accordingly a primary importance.

'We ought to commence with the simplest social forms in a state as near as possible to their rudimentary condition. The phenomena which early societies present us with are not easy at first to understand, but the difficulty of grappling with them bears no proportion to the perplexities

[1] Ancient Law, 3. [2] Ibid., 171,

which beset us in considering the baffling entanglement of modern social organization. But even if they gave more trouble than they do, no pains would be wasted in ascertaining the germs out of which has assuredly been unfolded every form of moral restraint which controls our actions and shapes our conduct at the present moment[1].' 'Ancient history has for scientific purposes the great advantage over modern, that it is incomparably simpler—simpler because younger. The actions of men, their motives, and the movements of society are all infinitely less complex than in the modern world, and better fitted, therefore, *to serve as material for a first generalization*[2].'

These observations disclose a point of view which would hardly have been taken up, if jurisprudence had been treated merely as a preparation for the legal profession and the practical art of the lawyer. However, with all truly philosophical thinkers, Maine was convinced that every notable improvement on the theoretical side of study would be sure to bear fruit a hundredfold on the practical side. It is surely not by mere chance that he was so bent on impressing on the young Calcutta students the importance of the scientific bearings of social study. In fact he often went out of his way to show by examples the obvious application of his theoretical views. Not to speak of the negative but decisive advantage of throwing discredit on *a priori* assumptions—a point which has been already sufficiently illustrated, the new attitude assumed by historical jurisprudence requires a careful examination of the matter-of-fact conditions which underlie every set of legal rules and have to be taken into account in its interpretation. It leads to a more intelligent handling of legislation and reform by teaching to reconcile new ideas with ancient traditions. In dealings with foreign countries and with the races of the Empire, which exhibit in their life all stages and degrees of civilization, there is ample opportunity for the direct use of the faculty of historical understanding, and, as competent judges observe, nothing was so

[1] Ancient Law, 119.
[2] Calcutta Address (Village Communities, 3rd ed., 269).

characteristic of Maine's activity in India as his remarkable power of seizing upon the vital features of the native arrangements and estimating with an unfailing perspicacity the strength of vernacular tradition and the possibilities of reform [1]. And even to an English lawyer studying the distinctions of real property or the rules of succession in the light of the historical method, they cease to be parts of an arbitrary and incoherent catechism and appear as organic growths, corresponding to certain social needs and based on ideas which have not lost their significance even in their conventional and somewhat antiquated apparel.

Maine was, however, so convinced of the truth and obviousness of this intimate connexion between theory and practice that he did not spend much time in discussing its bearings and devoted himself rather to what he felt he could do best, namely the mapping out of the general course of jurisprudence as it presents itself from the historical point of view. Not stopping to fathom intricate special problems, but intent on fixing decisive landmarks and tracing general outlines, he achieved a work which may be deficient in a close study of the evidence and in a thorough knowledge of the literature of the subject, but which will ever stand as a monument of creative thought, and an incentive to further investigations. Indeed the comprehensive account drawn up by this pioneer of historical jurisprudence has not been surpassed or equalled as a general survey of the ground.

The wide range of view which it embraced led our thinker to recognize at once that the historical method as practised by the German school was insufficient and had to be supplemented from other sources. To begin with, its observations were too much narrowed by the casual character of the evidence: most important links in recorded history are missing through the caprice of time, indeed whole periods and whole problems are plunged into entire darkness. Surely, in view of these frequent interruptions, common sense prompts the observer to look

[1] Sir A. Lyall in the LAW QUARTERLY REVIEW, iv. p. 132.

for indications to kindred processes of development instead of trusting to mere guesswork and inference. Once attention had been directed to that expedient, an immense perspective opened to the eye, not only in other cases recorded by history, but also in similar traits in the life of half civilized and uncivilized nations accessible to observation in the present. Apart from the powerful help afforded by comparative jurisprudence for the purpose of reconstructing obliterated and unfamiliar forms, the comparative method of inquiry provides the only possible basis for inductive reasoning in social science and for inquiries as to the laws of social development. Without concealing from himself the enormous disadvantages under which social studies labour in this respect when compared with natural science, Maine held that in order to come to anything like a grasp of recurring principles in legal development, we have to follow in substance the same way as in other branches of study, namely to work out methodical comparisons of ascertained facts. His chief aim was to propagate in the domain of jurisprudence the same spirit and methods which had already given such splendid results in two newly created departments of science—in comparative philology and comparative mythology[1]. The connexion of all these subjects with a study of India was fortuitous, but it had its meaning in defining the range of Maine's inquiries. These inquiries were directed not to the wide area of the juridical lore of mankind in general, but to the more restricted field of Aryan antiquities, where the historical material was more immediately bordering on the ethnographical and the facts could be brought together and analysed with greater ease. This limitation of the field had certain drawbacks, which are clearly discernible, for example, in the treatment of early marriage and kinship, and in the stubborn opposition of Maine to the discovery of so-called matriarchal relations[2]. Still it had also evident advantages in so far as it lessened

[1] Rede Lecture (Village Communities, 3rd ed.).
[2] Early Law and Custom, 200.

the danger of those haphazard comparisons and hasty generalizations which form the weak side of comparative jurisprudence, as represented, for example, by Post and Kohler in Germany. Altogether, although Maine quite realized the import of the modification brought about in the historical method by the introduction of the comparative element and sometimes spoke of the historical method being 'quickened and corrected' by the comparative, still it must be noticed that he considered both as equally necessary and intimately connected [1]. In this sense he says in the opening lecture on Village Communities:

'I may venture to affirm that the comparative method ... is not distinguishable in some of its applications from the historical method. We take a number of contemporary facts, ideas and customs, and we infer the past form of those facts, ideas and customs, not only from historical records of that past form, but from examples of it which have not yet died out of the world and are still to be found in it [2].'

It would be out of the question in a general survey like the present to give an account of the many particular points which were suggested to our author by his new departure. I shall just mention a few subjects discussed by him on the lines of comparative jurisprudence with a view to the formulation of historical laws.

Already on the opening pages of his first book we notice attempts of this kind:

'It is a known social law that the larger the space over which a particular set of institutions is diffused, the greater is its tenacity and vitality.'... 'There is a law of development which ever threatens to operate upon unwritten usage. A process commences which may be shortly described by saying that usage which is reasonable generates usage which is unreasonable [3].'

The sequence of phenomena in the evolution of juridical ideas was taken to follow a certain normal course: first, personal commands and judicial decisions by patriarchal

[1] Rede Lecture (Village Communities, 224). [2] Ibid., 6.
[3] Ancient Law, 17, 19.

rulers; then customary law expounded and applied by a social and military aristocracy; thirdly, the fixation of these customs in codes as the result of social conflicts; next, the gradual modification of strict archaic law by help of fiction, primitive equity, and positive legislation; later on the rise of general jurisprudence in connexion with the spread of international intercourse and philosophical theories, ultimately scientific jurisprudence, the advent of which has been much delayed by chance influences. Not all societies succeed in passing through all these stages, and their progress from one to the other does not always follow the same lines, but the landmarks on the road are remarkably alike and the general direction unmistakable. The history of testaments and contracts in Roman law is used as a groundwork to illustrate an historical sequence which may be taken as typical for the law of other nations and corresponds to certain ever-recurring requirements. The broad generalization of a gradual development of individual relations from status to contract is made to illuminate the course of law in general, and not only of Roman law. In the book on Early Institutions, the germs of feudalism are traced to economic habits by no means restricted to the Teutonic world, but, on the contrary, best illustrated by Celtic law. The topics which had the greatest attraction for Maine and those in regard to which his ideas, though contested and modified by later researches, have been most fruitful, are, of course, the comparative history of kinship and of property in land. His views in this respect are so well known and so often quoted that I may be allowed to confine myself to mentioning his guiding principle, namely, that the development of law in this domain has to start not from the notion of the individual, of individual rights and duties, but from the notion of the group, first, the kindred, then the village community, and admitting gradually and with considerable opposition individual rights within its sphere.

I may say once more that my object is not to analyse or criticize single doctrines, but to determine the points of

view, and I think that even on the strength of our very brief survey we are entitled to state a few propositions as substantial in Maine's teaching, and, at the same time, as material for the conception of comparative jurisprudence even in its present state.

1. The study of law is not merely a preparation for professional duties and an introduction to the art of handling professional problems. It may also be treated as a scientific subject.

2. Two methods of scientific investigation may be applied to the study of law: the method of deductive analysis on the basis of abstractions from the present state of legal ideas and rules, and the method of inductive generalization on the basis of historical and ethnographical observations.

3. In the domain of inductive jurisprudence, law appears as one of the expressions of history, and history is taken in the wide sense of all knowledge as to the social evolution of mankind.

4. Insomuch as every science ought to be directed to the discovery of laws, that is general principles governing particular cases, the historical method of jurisprudence is necessarily a comparative one.

I enumerate these articles not because they are new, but because I believe them to be true and am ready to subscribe them. They are comprehensive and efficient at the same time and ought to give a lead to many generations of searchers. On my own part, I would perhaps feel inclined to assign even a larger place to the analytical jurisprudence which seeks to take its stand by the side of political economy, but one has to make a choice of pursuits, and, of course, it is in the field of historical jurisprudence that I have had to work hitherto, and that I intend to go on doing work. It is a fair field and full of promise for all those who believe that law is one of the most characteristic, most important, and most definite expressions of social life.

In studying the subject nowadays we must be more careful in the analysis of single cases, more critical in our

historical investigations, less prompt to generalize and less sanguine of getting quickly to ultimate results in the shape of laws of development. In a word, we ought not only to learn from our predecessors but to keep clear of their failings in order to pave the way for our successors. And I hold myself fortunate to be called upon to form a link in the tradition of these studies which, thanks to Maine, has sprung from Oxford. It has always been understood in this country that tradition combined with definite aims is one of the greatest forces of civilization: it lifts the efforts of man from the restrictions of individual insignificance to mighty collective power. Appealing to a noble tradition, which has to be kept up with reverence and zeal, I will ask you, in conclusion, to admit me to your celebrated University as one who wishes, so far as it rests with him, to follow in the footsteps of your great teacher and thinker.

OXFORD: HORACE HART
PRINTER TO THE UNIVERSITY